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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,609	04/09/2004	Siddharth Shastri	JARR-190.1	1553

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10/06/2006

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EXAMINER

WINSTON, RANDALL O

ART UNIT	PAPER NUMBER
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1655

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,609

Applicant(s)

SHASTRI ET AL.

Examiner

Randall Winston

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-9, drawn to a method of producing an edible mushroom-producing fungi comprising the steps of supplying a growth environment, adding a synthetic folate, combining a spawn and cultivating the edible mushroom-producing fungi, classified in class 424, subclass 195.15, for example

II. Claims 10-13, drawn to a method of producing an edible mushroom comprising the steps of placing organic brown rice, sterilizing the brown rice, obtaining a volume of distilled water, etc, classified in class 47, subclass 1.1, for example.

III. Claims 14-18, drawn to a nutritional supplement containing reduced methylated active folates comprising edible mushroom-producing fungi grown in accordance with the method of claim 1, classified in class 514, subclass 251, for example.

IV. Claims 19-20, drawn to a method for treating disease in humans comprising administering a therapeutically effective amount of the nutritional supplement of claim 14, classified in class 424, subclass 400, for example.

2. Inventions I, II and IV are related as different methods. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP 806.04, MPEP 808.01). In the instant case, they are three different inventions because Invention

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I and II are different method of preparing which requires different method steps to achieve their preamble objective and Invention IV is a method of using which requires different method steps to achieve it's preamble objective than Invention I and II.

3. The inventions are distinct from each other because of the following reasons: Inventions I and III are related as product (i.e. III) and a process of making (i.e. I). The inventions are distinct if either or both of the following can be shown (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP 806.05(f)). In the instant case, the product as claimed (i.e. Maitake-*Grifola frondosa*) can be made by another and materially different process such as the claimed product can be made by different solvent extractions of the edible mushroom-producing fungi *Grifola frondosa* such as by water extraction of *Grifola frondosa* (see, e.g. Nanba et al (US 5854404, column 2 lines 60-67)).

4. The inventions are distinct from each other because of the following reasons: Inventions II and III are related as product (i.e. III) and a process of making (i.e. II). The inventions are distinct if either or both of the following can be shown (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP 806.05(f)). In the instant case, the product as claimed (i.e. Maitake-*Grifola frondosa*) can be made by another and materially different process such as the claimed product

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can be made by different solvent extractions of the edible mushroom-producing fungi *Grifola frondosa* such as by water extraction of *Grifola frondosa* (see, e.g. Nanba et al (US 5854404, column 2 lines 60-67)).

5. Inventions III and IV are related as product (i.e. III) and process of use (i.e. IV).

The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case, the product as claimed (i.e. Maitake-*Grifola frondosa*) can be used in a materially different process of using that product such as for antitumor purposes (see, e.g. Nanba et al (US 5854404, column 2 lines 60-67)).

6. The several inventions above are independent and distinct, each from the other. They have acquired a separate status in the art as separate subject for inventive effect and require independent searches. The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious another group. Finally the consideration for patentability is different in

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each case. Thus, it would be an undue burden to examine all the above inventions in one application.

Furthermore, Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

The claimed species are from the Markush group of claims 3 and 11:

a) shitake b) reishi c) maitake

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from a-c above for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that the reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP 809.02(a)

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be completed must include an election of the invention to be examined even though the requirements be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hoffman
9-28-06
SUSAN COE *Hoffman*
PRIMARY EXAMINER